Supreme Court, U.S.
FILED
SEP 23 1998
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(3)

No. 98-252

In The

# Supreme Court of the United States

October Term, 1997

FATHER JOHN HENGLE, OUR LADY OF VICTORY CHURCH and THE CLEVELAND CATHOLIC DIOCESE,

*Petitioners,*

*vs.*

BROTHER GABRIEL WARD,

*Respondent.*

*On Petition for Writ of Certiorari to the Court of Appeals, State of Ohio, Ninth Judicial District*

## REPLY BRIEF OF PETITIONERS

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The parties in this case agree that secular courts have no jurisdiction to adjudicate a conflict over the interpretation and/or application of religious doctrine. The disagreement is whether such a conflict exists in this case. As both the record before this Court and the Respondent's own arguments plainly show, such a conflict lies at the heart of the dispute. This Court must act to correct a constitutional error.

## FURTHER REASONS FOR GRANTING THE WRIT

### I. THE INSTANT CASE PRESENTS THIS COURT WITH THE OPPORTUNITY TO CLARIFY THE JURISPRUDENTIAL AND CONSTITUTIONAL LIMITS OF STATE ANTI-DISCRIMINATION LEGISLATION AS APPLIED TO RELIGIOUS-ENTITY EMPLOYERS.

To rationalize in this Court the state courts' exercise of jurisdiction over this dispute, one which the appellate court expressly acknowledged represented a dispute over catholic doctrine,[1] Respondent argues that, despite the fact that in the fourteen years preceding his separation from employment at Our Lady of Victory Catholic Church, he had solicited and maintained formal sponsorship from two separate Catholic communities, his religious philosophy and practices were uniquely personal and were the exclusive product of his own personal religious interpretation. Contradicting his sworn testimony that he considers himself to be a practicing Catholic[2], Edward Ward now distances himself from the Catholic views which he espoused at all times relevant to the instant dispute. Implicit in this shift of emphasis is the concession that Catholics are bound by their Bishops' interpretations on matters of Catholic religious garb in a Catholic workplace, because the same are issues of doctrine.

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1. *See* Appendix B at 9a.

2. *See* Appendix Q at 145a-151a.

The instant case squarely challenges the constitutional right of a religious entity to invoke its own religious authority in controlling who appears as a member of its religious order in its workplace against the asserted right of an individual employee to wear religious garb otherwise restricted to authorized individuals. Edward Ward disclaims that such a conflict constitutes a dispute over internal church doctrine. But, church doctrine lies at the very core of the determination of who may appear on church property outfitted in the attire of a religious representative of the faith.[3] For the Respondent to challenge that his wearing of the Canonical cloak constitutes a misrepresentation only serves to highlight further that the underlying dispute fundamentally involves Church doctrine governing who may wear such garb. Such a dispute has no place in a civil court.

Edward Ward further attempts to differentiate his own religion from the Catholic faith under the mistaken theory that such a differentiation would be determinative of his entitlement (or lack thereof) to wear the habit of a Catholic Religious. Herein lies the

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3. Specifically, the Code of Canon Law which applies to Roman Catholic entities and individuals details that "[t]he diocesan bishop is to rule the particular church committed to him with legislative, executive and judicial power in accord with the norm of law." Can. 391 § 1. Furthermore, "[s]ince he must protect the unity of the universal Church, the bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws." Can. 392 § 1. With respect to religious garb, the Code of Canon Law which the Bishop is obliged to enforce states "Religious are to wear the habit of the institute made according to the norm of proper law as a sign of their consecration and as a testimony of poverty." Can. 669 § 1. *See* Code of Canon Law Latin-English Edition, §§ 391 §1; 392 § 1, 669 § 1, reproduced in Petitioners' Appendix X at 295a. The Code of Canons of the Eastern Church contains correlative provisions at Can. 191 § 1; Can. 201 §1 and Can. 540. *See* Code of Canons of The Eastern Church Latin-English Edition, § 191 § 1, 201 § 1, 540, reproduced in Petitioners' Appendix Y at 296a.

fundamental flaw in the Respondent's position. While the Respondent would have this Court consider the instant case in an intellectual vacuum as if only his freedom of religion were at issue, his position directly contravenes the established constitutional precedent which protects the Petitioners' freedom of religion. *See e.g. Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 154, 97 L. Ed. 120 (1952) (Free exercise of religion is guaranteed not only to individuals but also to churches in their collective capacities, which must have "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.")

Edward Ward's repeated insistence that his separation from employment at Our Lady of Victory Church resulted from discrimination against him on the basis of religion represents an illustrative example of his fallacious reasoning. His conclusory accusations presuppose that the dispute in question occurred hypothetically in a traditional secular employment context. Such a scenario obviously differs dramatically from the instant employment context where the religious-entity employer has free exercise of religious rights of its own. It is a secular employment context analysis which would require consideration of actual or potential accommodations of particular religious convictions and practice. Likewise, only a secular employment context analysis would consider whether a person's religious exercise imposed any undue burden on another. In a situation where, as here, the religious-entity employer has correlative Free Exercise rights, the same considerations that the Respondent contends apply here would govern him. Query, what accommodation did he make for the Petitioners' religious convictions and practice? How would requiring him to refrain from wearing on church property attire which offends church protocol visit on him any undue burden greater than that shown by the Petitioners here? Such considerations are intended, not to echo the Respondent's misstatement of the law, but to demonstrate his myopic perspective and utter disregard of the free exercise of religion rights guaranteed to the Petitioners.

The Respondent can cite to no authority which undermines the axiomatic proposition that the Petitioners, in the exercise of their own rights to the free exercise of their religion, may accede to the precepts and practices of their faith in determining who may outfit himself or herself as a religious representative of their faith on their property. These rights belong to the Petitioners and exist irrespective of whether Edward Ward now chooses to consider himself a member of the Catholic faith or not. He may negate the authority of the Catholic Bishop over his personal practice of religion on his own private property on his own time, but he has no claim of right to supersede the freedoms constitutionally guaranteed to his religious entity employer and its operatives.[4] Where Edward Ward's free exercise of religion would abrogate the freedom of religion guaranteed his religious entity employer, his "right" must yield.

Petitioners do not and have not contended that all state anti-discrimination statutes must mirror that enacted by the federal legislature. Instead, they merely maintain that those which omit appropriate exemption for the protection of federal constitutional rights afforded religious entity employers must yield to that extent. The instant case so plainly illustrating the need for such protection, Petitioners have suggested that this Court should summarily reverse.

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4. In fact, by seeking to distance himself from an obligation to obey Catholic authority, Respondent further strengthens Petitioners' position. A non-Catholic would have no personal right to wear in a Catholic workplace the garb of a Catholic religious representative; nothing would be more offensive and insulting to a Catholic parish or diocesan employer than, in a Catholic workplace, a non-Catholic wearing symbolic religious garb such as that worn by a monk, priest, nun, bishop or pope. Plainly, the constitution would never sanction such abridgement of a religious entity's free exercise and, instead, would protect the religious entity's right to control this aspect of its workplace.

## II. THE RECORD BEFORE THIS COURT CONFIRMS THAT ALL ISSUES UPON WHICH THE PETITIONERS SEEK REVIEW WERE PRESERVED PROPERLY.

Any suggestion that the Petitioners failed to preserve below their assertion of their constitutional rights belies the record presented for review. Irrespective of the particular language in which they were drafted, the substance of Petitioners' First Amendment arguments has remained constant. At each stage of proceedings, the Petitioners have asserted that the issues raised by this case fell outside a secular court's jurisdiction and that any finding which would permit Edward Ward to outfit himself as a Religious while on Petitioners' property would violate their Free Exercise rights.

Specifically, the Petitioners argued in summary judgment briefing that the First Amendment to the United States Constitution barred Edward Ward's claims, expressly highlighting the ecclesiastical nature of the controversy and excerpting deposition testimony from Edward Ward confirming the same.[5] The Petitioners further cited United States Supreme Court authority in negating the constitutionality of a secular court rendering judgment over competing religious views.[6] After eliciting trial testimony confirming the doctrinal nature of the instant dispute[7], the Petitioners, asserting the same First Amendment arguments and authorities, twice moved the Court to direct a verdict in their favor.[8] Again, the Petitioners implored the trial court to respect the limitations on its jurisdiction in their Motion for Judgment

5. *See* Appendix P at 117a-121a.

6. *See* Appendix O at 105a. *See also* Appendix P at 117a-121a.

7. *See* Appendix Q at 147a-151a; 154a-155a; 159a-161a.

8. *See* Appendix R at 164a-170a; Appendix S at 179a.

Notwithstanding the Verdict.[9] Overruling of each of these Motions predicated the Petitioners' subsequent appeals.[10]

Clearly, Petitioners have asserted their First Amendment rights timely and have pursued recognition of those rights in a comprehensive manner. Neither law nor logic justifies Edward Ward's use of the state statute in question[11] to mock the precepts and practices of the Roman Catholic Church while on its property and in its employ. The Ohio state courts having systematically disregarded these Petitioners' constitutional rights, intervention by this Court is both permitted and prescribed.

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9. *See* Appendix T, pp. 185a-189a.

10. *See* Appendix U at 234a-237a, 251a-262a, 265a-266a; Appendix V at 279a-286a.

11. Ohio Rev. Code § 4112.02.

## CONCLUSION

Respondent does not raise credible challenge to the issues Petitioners have presented for review nor does he effectively refute the legal authority applicable thereto. Rather, his Brief in Opposition merely continues his marginalization of the constitutional issues *sub judice* and disputes only that these issues merit review from this Court. It is this very position which commands correction.

Respectfully submitted,

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# APPENDIX

## APPENDIX X — CODE OF CANON LAW (LATIN - ENGLISH EDITION)

Translation prepared under the auspices of the Canon Law Society of America

Canon Law Society of America
Washington, D.C. 20064

**Can. 391** — § 1. The diocesan bishop is to rule the particular church committed to him with legislative, executive and judicial power in accord with the norm of law.

**Can. 392** — § 1. Since he must protect the unity of the universal Church, the bishop is bound to promote the common discipline of the whole Church and therefore to urge the observance of all ecclesiastical laws.

**Can. 669** — § 1. Religious are to wear the habit of the institute made according to the norm of proper law as a sign of their consecration and as a testimony of poverty.

# APPENDIX Y — CODE OF CANONS OF THE EASTERN CHURCHES (LATIN - ENGLISH EDITION)

Translation prepared under the auspices of the
Canon Law Society of America

Canon Law Society of America
Washington, D.C. 20064

**Can. 191** — § 1. The eparchial bishop governs the eparchy entrusted to him with legislative, executive and judicial power.

**Can. 201** — § 1. Since he is obliged to safeguard the unity of the entire Church, the eparchial bishop is to promote the common discipline of the Church as well as to urge the observance of all ecclesiastical laws and legitimate customs.

**Can. 540** — In respect to the habit of the members the prescriptions of the statutes, and outside their own houses also the norms of the eparchial bishop, are to be followed.